IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE NINTEENTH DAY OF OCTOBER,
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION No.21449 OF 2006

Between:

M/s.Shah Motilal Suresh Kumar,
Rep. by its Proprietor Mr.Suresh Gandhi.

..... PETITIONER

AND

Deputy Commercial Tax Officer-III,
Ananthapur.

....RESPONDENT

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION No.21449 OF 2006

O R D E R
(Per Sri Justice J.Chelameswar)

This writ petition is filed with a prayer as follows:

> **"Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate writ or order more particularly one in the nature of Writ of Mandamus declaring the action of the Respondent in detaining 600 bags of skimmed milk power covered by invoice No.106 Challan No MP 255 dated 28 8 2006 for Rs.17,55,000/- dt.05.10.2006 vide detention Notice No.5497 as illegal and contrary to law and consequently set aside the detention notice issued by the respondent dt.5-10-2006 and pass …"**

The petitioner is a proprietary concern and a registered dealer under the APVAT Act, 2005 and also CST Act with the Commercial Tax Officer, Begum Bazar Circle, Hyderabad. The petitioner is dealing in dairy products. It is asserted by the petitioner in the affidavit filed in support of the writ petition that the petitioner purchased 600 bags of skimmed milk powder from M/s. Bhole Baba Milk Food Industries Ltd. And each such bag appears to weigh
25 Kgs. While the goods were in transit, the vehicles were intercepted by the respondent and were detained as the respondent noticed certain discrepancies in the documents accompanying the goods, the details of which may not be necessary for the present purpose. Therefore, the respondent issued a notice on 05.10.2006. Hence, the present writ

petition seeking release of the detained goods.

When the matter is taken up for admission, learned Government Pleader appearing for the respondent made a statement that subsequently proceedings for confiscation of the goods under Section 45(7) of the A.P. VAT Act have already been initiated.

In view of the fact that the commodity detained is a perishable one, we are of the opinion that the writ petition can be disposed of at the admission stage itself by directing the respondent to release the detained commodity on condition the petitioner furnishes a bank guarantee for an amount of Rs.19,00,000/- (Rupees Ninteen lakhs only). Such release shall be without prejudice to the enquiry under Section 45(7) of the Act. On completion of enquiry, if the respondent comes to the conclusion that the goods are required to be confiscated, the respondent shall encash the bank guarantee after determining the exact value of the goods in question. Otherwise, the bank guarantee shall be returned to the petitioner.

With the above direction, the writ petition is disposed of.

JUSTICE J.CHELAMESWAR

JUSTICE D.APPA RAO

19TH OCTOBER, 2006

Note: Copy by wire at party's cost.

(B/O) PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION No.21449 OF 2006
(Per Sri Justice J.Chelameswar)

19th OCTOBER, 2006